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STATE FOR EB/TPP/BTA; STATE PASS TO USTR-GBLUE

E.O. 12958: N/A
TAGS: ETRD ECON EFIN GH
SUBJECT: GHANA'S 2010 TRADE ESTIMATE REPORT

REF: STATE 106353

¶1. SUMMARY: The U.S. goods trade surplus with Ghana was $386 million in 2008, an increase of $169 million from 218 million in 2007. U.S. goods exports in 2008 were $609 million, up 46.2 percent from the previous year. Corresponding U.S. imports from Ghana were $222 million, up 11.8 percent. Ghana is currently the 89th largest export market for U.S. goods. (NOTE: Above summary statistics have not been updated, per REFTEL instructions.)

¶2. The stock of U.S. foreign direct investment (FDI) in Ghana was $306 million in 2006 (latest data available).

¶3. The United States has signed three agreements promoting trade and investment between the U.S. and Ghana: the Overseas Private Investment Corporation (OPIC) Investment Incentive Agreement, the Trade and Investment Framework Agreement (TIFA), and the Open Skies air transport agreement.

IMPORT POLICIES

Tariffs:

¶4. Ghana is a Member of the WTO and the Economic Community of West African States (ECOWAS). According to the WTO, Ghana has bound only 1 percent of tariffs on industrial goods. Along with other ECOWAS countries, Ghana adopted a common external tariff (CET) in 2008 that requires members to simplify and harmonize ad valorem tariff rates into five bands: zero duty on social goods (e.g., medicine, publications); 5 percent on imported raw materials; 10 percent on intermediate goods; 20 percent on finished goods; and 35 percent on goods in certain sectors. The fifth band Q proposed by Nigeria Q is still under negotiation among member countries. Ghana currently maintains 190 exceptions to the CET, and the highest tariff charged is 20 percent. The tariff rates for the items covered under these exceptions will require some changes to align with the CET.

Nontariff Measures:

¶5. Importers are confronted by a variety of fees and charges in addition to tariffs. Ghana levies a 12.5 percent value added tax (VAT) plus a 2.5 percent National Health Insurance levy on the duty-inclusive value of all imports and locally produced goods, with a few selected exemptions. In addition, Ghana imposes a 0.5 percent ECOWAS surcharge on all goods originating from non-ECOWAS countries and charges 0.4 percent on the free on board value of goods (including VAT) for the use of the automated clearing system, the Ghana Community Network (GCNet). Further, under the Export Development and Investment Fund Act, Ghana imposes a 0.5 percent duty on all non-petroleum products imported in commercial quantities. Ghana also applies a 1 percent processing fee on all duty free imports.

¶6. All imports are subject to destination inspection and an inspection fee of 1 percent of cost, insurance and freight (CIF). Importers have indicated that they would prefer a flat fee on each transaction based on the cost of the services rendered. The destination inspection companies (DIC) licensed by the Ghanaian

government account for the longest delay in import clearance. A 2008 study on port fees revealed that, out of the total transaction time of 69 hours for import clearance, destination inspection accounts for 45 hours. Following lobbying from importers, Ghana Customs has established a Customs Management System (CMS) to take over the valuation and classification of imported goods from the DICs. The new system is intended to reduce the time for import clearance through the automation of key steps associated with customs entry processing, payments, and clearance. However, implementation of the CMS has been delayed due to the extension of an agreement with one of the DICs.

¶7. In December 2009, the GOG introduced a bill in Parliament to change Ghana's excise tax regime from the current specific excise tax to an ad valorem excise tax on "waters, tables including mineral waters of all description." Spirits, beers other than indigenous beer, and tobacco products are included in the products covered by this amendment. This amendment would equalize the difference in tax treatment of malt drinks and carbonated soft drinks introduced in ¶2007. The non-alcoholic beverages above would be taxed at 20 percent of the ex-factory price (i.e. the wholesale price, excluding transportation costs). The bill has not passed Parliament as of December 4, 2009.

¶8. An examination fee of 1 percent is applied to imported vehicles. Imported used vehicles that are more than 10 years old incur an additional tax ranging from 2.5 percent to 50 percent of the CIF value. Ghana Customs maintains a price list that is used to determine the value of imported used vehicles for tax purposes. There are complaints that this system is not transparent because the price list used for valuation is not publicly available.

¶9. Each year, between May and October, there is a temporary ban on the importation of fish (exempting canned fish) to protect local fishermen during their peak season.

¶10. Certificates are required for agricultural, food, cosmetics, and pharmaceutical imports. The import procedures for these products are cumbersome.

¶11. Permits are required for import of poultry and poultry products. The permit process is time consuming, and at the time the permit is issued, a non-standardized quantity limit is imposed.

¶12. In November 2007, the Ghanaian government imposed a temporary ban on the import of tomato paste and concentrates, citing "unfair trade practices." Temporary permits were, however, granted to some importers to import the tomato concentrate for canning.

¶13. All communications equipment imports require a clearance letter from the National Communications Authority. Securing a clearance letter prior to importation can help avoid delays at the port of entry.

EXPORT SUBSIDIES

¶14. The government uses preferential credits and tax incentives to promote exports. The Export Development Investment Fund administers financing on preferential terms using an 18 percent interest rate, which is below market rates. Agricultural export subsidies were eliminated in the mid-1980s. The Export Processing Zone (EPZ) Law, enacted in 1995, leaves corporate profits untaxed for the first 10 years of business operation in an EPZ, after which the rate climbs to 8 percent (the same rate for non-EPZ companies). Seventy percent of production in the EPZ zones must be exported. The current corporate tax rate for non-exporting companies is 25 percent.

STANDARDS, TESTING, LABELING, AND CERTIFICATION
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¶15. GhanaQs Conformity Assessment Program (CAP) leaves open the possibility for trade disruption, discrimination, and imposition of high costs on imported goods. More detail is required from the GOG as to whether all products listed require lab certificates, if there is risk-based analysis justifying the need for certificates and/or testing fees, and if internationally recognized certification marks are acceptable. However, no actual examples of trade discrimination under this category have been filed with the USG.

¶16. Ghana has issued its own standards for most products under the auspices of its testing authority, the Ghana Standards Board (GSB). The GSB has promulgated more than 444 Ghanaian standards and adopted more than 1,440 international standards for certification purposes. The Food and Drugs Board is responsible for enforcing standards for food, drugs, cosmetics, and health items.

¶17. Under GhanaQs Conformity Assessment Program (CAP), some imports are classified as "high risk goods" (HRG) that must be inspected by GSB officials at the port to ensure they meet Ghanaian standards. The GSB has classified the HRG into 20 broad groups, including food products, electrical appliances and used goods. The classification of HRG is vague and confusing, and its scope has raised numerous questions. For example, the category of "alcoholic and nonalcoholic products" could presumably include beverages, pharmaceuticals, and industrial products under the same classification. The CAP process requires prior registration with GSB as an importer of HRG and GSB approval to import any listed HRG. The importer must submit to GSB a sample of the HRG, accompanied by a certificate of analysis (COA) or a certificate of conformance (COC) from accredited laboratories in the country of export. Most often, the GSB officials conduct a physical examination and check labeling and marking requirements and ensure that goods are released within 48 hours. Currently, the fee for registering the first three HRG is GHC 50(about $34) and GHC 20 for each additional product. Any HRG entering Ghana without a COC or COA from an accredited laboratory is detained and subjected to testing by the GSB. The importer is required to pay the testing fee based on the number and kinds of parameters tested. The GSB publishes most of its fees on its website. U.S. companies have expressed concern that the standards that the Ghana CAP utilizes are difficult to determine and that independent third party certifications and marks may not be recognized, resulting in costly and redundant testing.

¶18. The GSB requires that all food products carry expiration or shelf life dates and requires that the expiration date at the time it reaches Ghana should be at least two-thirds the shelf life. Goods that do not have two-thirds of their shelf life remaining are seized at the port of entry and destroyed. Questions have been raised regarding the consistency of this requirement with the Codex Alimentarius Commission General Standard for Labeling of Pre-packaged Foods.

¶19. Ghana passed provisional biosafety legislation in March 2008 to allow the use of agricultural biotechnology pending the passage of a larger biosafety regime. The legislation established the National Biosafety Committee as the national focal point on biosafety and allows the conduct of field trials and contained use. It does not currently allow the sale or release of biotech products to farmers or consumers. The main biosafety legislation is under review and that will establish the National Biosafety Authority, which will be the administrative body responsible for all issues related to biotechnology in Ghana.

Sanitary and Phytosanitary Measures:

¶20. For human health reasons, Ghana prohibits the importation of meat with a fat content by weight greater than 25 percent for beef, 25 percent for pork, 15 percent for poultry, and 30 percent for mutton. Imported turkeys must have their oil glands removed. Ghana restricts the importation of condensed or evaporated milk with less than 8 percent milk fat by weight, and dried milk or milk powder containing less than 26 percent by weight of milk fat, with the exception of imported skim milk in containers.

¶21. Ghana has lifted its previous restriction on imports of U.S. boneQin beef, which was based on concerns regarding Bovine Spongiform Encephalopathy (BSE).

GOVERNMENT PROCUREMENT

¶22. The Public Procurement Authority, established in 2004, administers the public procurement law to enhance transparency and efficiency in the procurement process. Individual government entities have formed tender committees and tender review boards to conduct their own procurement. Large public procurements are made

by open tender and foreign firms are allowed to participate. A draft guideline being applied to current tenders gives a margin of preference of 7.5 percent to 20 percent to domestic suppliers of goods and services in international competitive bidding. Notwithstanding the procurement law, companies cannot expect complete transparency in locally funded contracts. Vendor or foreign-government subsidized financing arrangements have in some cases appeared to be a crucial factor in some Government of Ghana procurement actions. Allegations of corruption in government procurement are also fairly common. Ghana is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

¶23. IPR protection continues to be a challenge in Ghana, as the lack of enforcement discourages foreign investment dependant on IPR protections. Ghana has signed treaties pertaining to the World Intellectual Property Organization (WIPO) Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT). The WCT has been ratified and is in force, but the WPPT, despite being signed and ratified by the GoG in 2006, has not been recognized by WIPO as having entered into force due to confusion between the GoG and WIPO regarding WIPOQs technical filing procedures in Geneva.

¶24. Ghana is a party to the World Intellectual Property Organization (WIPO) Convention, the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, the WIPO Copyright Treaty and the African Regional Industrial Property Organization protocols. Ghana has signed the WIPO Performances and Phonograms Treaty and the Patent Law Treaty. Since December 2003, Parliament has passed six bills designed to bring Ghana into compliance with the WTO TRIPS Agreement. The new laws address copyright, trademarks, patents, layout-designs (topographies) of integrated circuits, geographical indications, and industrial designs. Regulations to define the procedures for comprehensive IPR protection and enforcement have not been promulgated. However, copyright regulations were passed in July 2008.

¶25. There are incidents of piracy of copyrighted works. Although there is no reliable information on the scale of this activity, industry estimates range from 40-90 percent for certain sectors such as pharmaceuticals and computer software. Holders of intellectual property rights have access to local courts for redress of grievances, although very few trademark, patent, and copyright infringement cases have been filed in Ghana in recent years. Companies who have filed cases report prolonged timescales for resolution (a possible factor in discouraging other companies from filing such cases).

¶26. Government initiated enforcement remains relatively rare but the Copyright Office, which is under the Attorney GeneralQs Office, periodically initiated raids on markets for pirated works. The Customs Service has collaborated with concerned companies to inspect import shipments for specific counterfeit products.

SERVICES BARRIERS

¶27. GhanaQs investment code precludes foreign investors from participating in four economic sectors: petty trading, the operation of taxi and car rental services with fleets of fewer than 10 vehicles, lotteries (excluding soccer pools), and the operation of beauty salons and barber shops.

¶28. Ghana allows foreign telecommunications firms to provide basic services, but requires that these services be provided through joint ventures with Ghanaian nationals. The National Communications Authority has yet to become effective in resolving complaints alleging that Ghana Telecom, the state-owned national telecommunications operator, is engaging in anticompetitive practices.

¶29. In the insurance sector, Ghana limits foreign ownership to 60 percent, except for auxiliary insurance services, where 100 percent foreign ownership is permitted. Although foreign investors may participate in GhanaQs market for banking and other non-insurance

financial services, discriminatory treatment applies to companies owned by non-resident investors. Specifically, under the central bankQs new minimum capital requirement for banks, existing banks with Ghanaian majority share ownership (local banks) have until 2012 to fully increase their capital base to GHC 60 million (about $41 million) from GHC 7 million. By contrast, banks with majority foreign ownership need to meet the target by 2009.

INVESTMENT BARRIERS

¶30. Foreign investment projects must be registered with the Ghana Investment Promotion Center (GIPC), a process that is supposed to take no more than five business days but that often takes significantly longer. In an attempt to improve its service, in 2007 the GIPC introduced an online registration system.

¶31. The following minimum capital contribution requirements apply for non-Ghanaians who wish to invest in Ghana: $10,000 for joint ventures with a Ghanaian entity; $50,000 for investment in enterprises wholly-owned by a non-Ghanaian; and $300,000 for investment in trading companies (firms that buy/sell finished goods) either wholly or partly owned by non-Ghanaians. The GIPC has proposed increasing the minimum capital contribution for investment in trading companies to $1 million. Trading companies must also employ at least 10 Ghanaians.

ELECTRONIC COMMERCE

¶32. Barriers to electronic commerce are mainly related to inadequate telecommunications and financial infrastructure. A proposed legal framework for electronic transactions is before Parliament. Payments in Ghana are largely cash based. In June 2008, the government established a smart card payment system QE-ZwichQ that links banks and financial institutions throughout Ghana and allows the use of point of sale and other electronic payments tools, but enrollment has been low.

OTHER BARRIERS

¶33. The residual effects of a highly regulated economy and lack of transparency in certain government operations create an added element of risk for potential investors. Entrenched local interests sometimes have the ability to derail or delay new entrants, and securing government approvals may depend upon an applicantQs local contacts. The political leanings of the Ghanaian partners of foreign investors are often subject to government scrutiny, and ensuring compliance with the U.S. Foreign Corrupt Practices Act remains a challenge.

¶34. Foreign investors have experienced sustained difficulties and delays in securing required work visas for non-Ghanaian employees. The GIPC is unable to guarantee provision of work permits from the Ministry of InteriorQs Department of Immigration. Work permits that are generated can unpredictably take several months from application to delivery. At least one company only received a fraction of the total number of needed permits, leading to the cancellation of an infrastructure project worth more than USD 150 million.

¶35. GhanaQs complex land tenure system creates challenges for establishing clear title on real estate. Non-Ghanaians can have access to land only on a leasehold basis.

¶36. Port inefficiencies increase import and export costs. The Customs Service phased in an automated customs declaration system that was established in the last quarter of 2002 to facilitate customs clearance. Although the new system has reduced the number of days for clearing goods through the ports, the desired impact has yet to be realized because complementary services from government agencies, banks, destination inspection companies, and security services have not been established.
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